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SUBJECT: DUTCH COUNTER-TERRORISM LEGISLATION

1. SUMMARY: Since the September 11 terrorist attacks in the United States, the Dutch have steadily constructed a solid framework of counter-terrorism (CT) laws. The Netherlands has ratified and implemented all UN conventions and protocols on terrorism as well as all legal instruments in the European Council's counter-terrorism declaration of March 2004. Additional counter-terrorism legislation -- passed in the wake of the Madrid bombings -- is on par with that of other EU member states. Key provisions of legislation passed in August 2004, for example, criminalized conspiracy to commit a terrorist offense, made recruitment for jihad a crime, and raised sentences for homicide, hijacking and kidnapping when those crimes are committed with "terrorist intent." The government's September 20 budget presentation for 2006 did not include new CT legislative initiatives, but reiterated the government's intent to seek Parliamentary approval for several legislative packages already proposed. This cable summarizes the provisions of counter-terrorism legislation enacted in the Netherlands since 2001, and the GONL's proposals for additional CT legislation. END SUMMARY.

2. The 2006 GONL budget, presented to Parliament on September 20, indicates that the government will continue to place a priority on strengthening the Netherlands' CT capacity. The budget message noted the government's expectation that Parliament would pass in the first half of 2006 two legislative packages that would permit expanded use of special investigative methods, including phone taps and surveillance, in terrorism investigations, facilitate police detention of terrorist suspects, and allow greater use of intelligence information in trials of suspected terrorists. No new CT legislative initiatives were announced in the budget message. The Justice Ministry budget for counter-terrorism programs will be increased to 37 million euros in 2006 and 40 million euros in 2007, from 29.5 million euros this year.

POST 9/11 CT LEGISLATION

3. Legislative and administrative measures implemented since 2001 to strengthen the Netherlands' counter-terrorism capacity include provisions that:

- Increase (by up to 50 percent) the sentences for crimes such as homicide, hijacking and kidnapping if the crimes were committed with "terrorist intent;"
- Make conspiracy to commit a terrorist offense a crime, punishable by up to 10 years imprisonment; this provision allows prosecutors to bring charges against suspected terrorists at an earlier stage;
- Make recruiting for jihad a criminal offense, punishable by up to four years imprisonment (use of the term "jihad" gave this provision a specific Islamic bent);
- Redefine criminal participation in a terrorist organization to include the provision of financial or other material support, making it easier to prosecute those who finance terrorism;
- Allow courts to ban terrorist organizations on UN and EU asset freeze lists, and criminalize financial support for banned organizations;
- Provide tools -- including the deportation or imprisonment of members -- to disrupt the activities of foreign organizations not listed on asset freeze lists but whose activities have been ruled by the courts to be illegal in the Netherlands;
- Improve AIVD (Dutch intelligence agency) capabilities, including greater human resources, and improve coordination and information sharing between intelligence services and the police;
- Enhance protection of critical infrastructure and high-level GONL officials;
- Expand monitoring of non-profit organizations; and,
- Strengthen efforts to integrate immigrants into Dutch society to prevent extremism.

PENDING LEGISLATIVE PROPOSALS

4. In addition to the provisions already implemented, five

packages of legislation are pending. The first two were submitted to Parliament for approval in 2005, the remaining three have not yet been sent to Parliament.

1A. A bill to permit the use of intelligence information in criminal proceedings was approved by Parliament's Second (lower) Chamber in May 2005. The bill would enable an examining judge to assess evidence from intelligence and security services without disclosing it to the defense. The bill would also permit intelligence agents to testify anonymously. The bill is currently before the Parliament's First (upper) Chamber. The September budget statement indicates the government's expectation that the bill will be passed into law in early 2006.

1B. A bill to expand investigative powers in investigations of terrorist activities was sent to Parliament in June 2005. The 2006 budget presentation indicates the government's expectation that the bill would be passed by mid-2006. The provisions of the bill would:

- lower the threshold for use of special investigative methods, such as phone taps, infiltration and surveillance. These methods would be permitted when there are "indications" a suspect is involved in a terrorist activity; current law requires a "concrete suspicion" of involvement;
- authorize prosecutors to request data from banks, companies, and other private organizations, currently prohibited by the Privacy Protection Act, to obtain information about terror suspects;
- authorize stop and search operations in high-risk areas, such as airports and train stations, even if individuals subject to these procedures are not suspected of a crime;
- lower the threshold for extending a terror suspect's provisional detention. The bill would allow authorities to hold a terrorist suspect for up to 24 days based only on a suspicion of terrorist involvement. Under current law, authorities may hold a suspect for only 14 days unless more concrete evidence is presented to a judge. The bill would not change the current 100-day limit during which a judge can detain a suspect before a prosecutor presents the full case to a judge.

1C. In June, the Cabinet approved a draft bill to give Justice Minister overriding powers. The bill would give the Justice Minister broad decision-making power in the event of a terrorist attack, including allowing the Minister to independently cancel air traffic, cell-phone service, and rail transport in the face of an imminent threat. The Interior Minister would remain responsible for crisis control after an attack. The Council of State, which must review all legislative proposals before they are submitted to Parliament for approval, is currently reviewing the bill.

1D. The bill on preventive CT measures would control the movement of individuals suspected of involvement in terrorism. The bill would allow the government to issue restraining orders, based on intelligence or police information, prohibiting a terror suspect's physical proximity to specific locations or persons. The draft legislation was approved by the Cabinet in June and is now before the Council of State for review.

1E. A draft bill to penalize glorification of terrorist offenses would impose curbs on freedom of speech. Justice Minister Donner sent the proposal to advisory bodies for review in late July. Specialized advisory bodies are responsible for reviewing all proposed legislation before final Cabinet approval and submission to Parliament. This is the most controversial of the GONL's proposed CT legislation. Critics of the proposed law have expressed concerns about the broad scope of the bill's provisions, which would make glorification, justification or denial of terrorist attacks, genocide or war crimes a criminal act if such comments could disturb public order. The offense would be punishable by a year's imprisonment, and by removal from office if an individual uses a position to foment hatred. The proposed bill would also increase the penalties for defamation and blasphemy.

15. COMMENT. The Netherlands has had relatively little experience with domestic terrorism since the 1970's when Moluccan separatists mounted a violent campaign for independence from Indonesia on Dutch soil. Nevertheless, the Dutch government has worked steadily to strengthen its capacity to deter terrorist activities in the Netherlands. Dutch counter-terrorism legislation has kept pace with that of other EU member states. Officials at the British Embassy note that Dutch and British approaches are remarkably similar, though Dutch legislation does not go as far as that of the UK. END COMMENT.